

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LARRY MALONE, AS ADMINISTRATOR OF THE MYRNA MALONE ESTATE and on behalf of LARRY MALONE, husband and on behalf of her natural born children RYAN MALONE and JESSICA MALONE, Plaintiffs, v. AMERICAN FAMILY INSURANCE COMPANY, Defendant.	Case No.: LACL134770 PLAINTIFF'S REQUESTED JURY INSTRUCTIONS
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COME NOW the Malone Plaintiffs, and request the following jury instructions which are attached.

LAWYER, LAWYER, DUTTON & DRAKE, LLP

By: /s/ Jim Lawyer

Jim Lawyer AT0004680

Email: jlawyer@lidd.net.

John Lawyer AT0012320

Email: johnlawyer@lidd.net

Robert Conklin AT0012658

Email: rconklin@lidd.net

1415 Grand Avenue

West Des Moines, IA 50265-3473

Phone: (515) 224-4400

Facsimile: (515) 223-4121

Email: thoberg@lidd.net

Email: uphanouvong@lidd.net

ATTORNEYS FOR PLAINTIFF.

CERTIFICATE OF SERVICE

The undersigned certifies that on 9/11/2017, the foregoing instrument was electronically filed with the Clerk of Court using the Electronic Document Management System (EDMS) and copies were sent by EDMS to all registered filers pursuant to Iowa Court Rule 16.317(1)(a)(2) and by regular U.S. Mail to all NON registered filers pursuant to Iowa Court Rule 16.317(1)(b).

/s/ Jim Lawyer

Jim Lawyer AT0004680

JURY INSTRUCTION NO. 1

Statement of the Case.

This case arises out of a serious car crash that happened on November 22, 2014 near Sloan, Iowa. A car driven by Shishay Gidey crossed the center line on Highway 141 and crashed into a GMC extended cab pickup driven by Larry Malone, which also contained his wife, Myrna Malone; his daughter, Jessica Malone; and his sister-in-law, Donna Timm. All parties agree that Shishay Gidey was 100% at fault for the crash.

As a result of Mr. Gidey negligently crossing the center line, Myrna Malone was killed. The estate of Myrna Malone sued their own insurance company, American Family Insurance Company for breach of contract. It is undisputed that the Malone family purchased and paid for contracts of insurance providing underinsured motorist coverage to cover harms and losses caused by a negligent driver who did not have insurance to fully pay for the damage caused. All parties agree Mr. Gidey had too little insurance coverage to cover the damages done. Your job as jurors will be to appraise the total losses under Iowa law as explained in the instructions and I will enter a verdict based on your answers and the contract and law.

The claims in this case are for loss of consortium, meaning the value of the loss of services companionship, love, affection and guidance that Myrna Malone would have provided her husband Larry Malone and children Ryan and Jessica Malone had she not been wrongfully killed.

In the issues arising from this claim, you are instructed as follows:

JURY INSTRUCTION NO. 2

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

Authority

Roushar v. Dixon, 231 Iowa 993, 2 N.W.2d 660 (1942)

JURY INSTRUCTION NO. 3

Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Authority

Mabrier v. A.M. Servicing Corporation of Raytown, 161 N.W.2d 180 (1968)

JURY INSTRUCTION NO. 4

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories or request for admissions).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Authority

Iowa Rules of Evidence.

JURY INSTRUCTION NO. 5

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

Authority

Burger v. Omaha & C.B. St. Ry. Co., 139 Iowa 645, 117 N.W.35 (1908)

JURY INSTRUCTION NO. 6

The parties agree that the negligent act causing the wrongful death of Myrna Malone was exclusively done by Shishay Gidey, and that none of the Plaintiffs are at fault. Your duty will be to answer questions in appraising the value of the losses to Larry Malone, Jessica Malone and Ryan Malone as explained in these instructions.

JURY INSTRUCTION NO. 7

The Plaintiff must prove the amount of damage resulting from the wrongful death of Myrna Malone by evidence which is more convincing than opposing evidence. The amount you assess for the Loss of Consortium cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount proved by the evidence. A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. The amounts, if any, you find for each of the above items will be used to answer the special interrogatories.

JURY INSTRUCTION NO. 8

"Spousal consortium" is the fellowship of a husband and wife and the right of each to the intangible benefits of company, cooperation, affection, love and the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support from the deceased wife.

JURY INSTRUCTION NO. 9

In determining the reasonable value of compensation for Larry Malone's spousal consortium claims from the death of Myrna Malone, you may consider the following items:

1. Her capacities, abilities, and efficiencies in performing the duties of a spouse.
2. Her strength of character, life expectancy, health, physical condition, and age.
3. The circumstances of her life.
4. Her skill and ability in providing instruction, guidance, advice and assistance to her husband.
5. Her husband's respective needs.
6. All other facts and circumstances bearing on the present value of services.

The amount you assess for Loss of Spousal Consortium cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount proved by the evidence. A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. The amounts, if any, you find for each of the above items will be used to answer the special interrogatories.

JURY INSTRUCTION NO. 10

"Parental consortium" is the relationship between parent and child and the right of the child to the benefits of companionship, comfort, guidance, affection, love and aid of the parent in every parental relationship, general usefulness, industry and attention within the family. It does not include the loss of financial support from the injured parent, nor mental anguish caused by the parent's death.

A child is not entitled to damages for loss of parental consortium unless the parent's death has caused a significant disruption or diminution of the parent-child relationship.

JURY INSTRUCTION NO. 11

In determining the reasonable value of compensation for the parental consortium claims of Ryan Malone, and Jessica Malone relating to the death of their mother, Myrna Malone, you may consider the following items:

1. Her capacities, abilities, and efficiencies in performing the duties of a mother.
2. Her strength of character, life expectancy, health, physical condition, and age.
3. The circumstances of her life.
4. Her skill and ability in providing instruction, guidance, advice and assistance to her children.
5. The respective needs of her children.
6. All other facts and circumstances bearing on the present value of services.

The amount you assess for Loss of Consortium cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount proved by the evidence. A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

JURY INSTRUCTION NO. 12

A Life Expectancy Table indicates the normal life expectancy of people who are the same age as each injured person. For Myrna Malone, who was 70 years old on the day of her death, life expectancy was 17 more years of life. For Larry Malone who was also 70 years old on the day of her death, life expectancy was 17 more years of life. The statistics from a Life Expectancy Table are not conclusive. You may use this information, together with all the other evidence about each Plaintiff's health, habits, and lifestyle, when deciding issues of future damages.

JURY INSTRUCTION NO. 13

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage, and agreeing in advance that the average of those estimates shall be your item of damage.

Authority

Moose v. Rich, 253 N.W.2d 565 (Iowa 1977)

Sheker v. Jensen, 241 Iowa 583, 41 N.W.2d 679 (1950)

Manna v. McIntosh, 519 N.W.2d 815 (Iowa App. 1994)

JURY INSTRUCTION NO. 14

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

JURY INSTRUCTION NO. 15

I am giving you one verdict form. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict must be signed by your foreman or forewoman.

After deliberating for six hours from _____ o'clock _____.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict must be signed by all seven jurors who agree.

When you have agreed upon the verdict and appropriately signed it, tell the Court Attendant.

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

[INSERT],

Plaintiff,

v.

[INSERT];

Defendant.

LAW NO.

Special Interrogatories

We find the following answers on the questions submitted to us:

Question No. 1: What is the total amount of damages sustained for loss of consortium for the death of Myrna Malone for each of the following family members:

1. Larry Malone \$ _____
2. Ryan Malone \$ _____
3. Jessica Malone \$ _____

Foreperson*

* To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the jurors agreeing thereto after six hours or more of deliberation.